

Office of the Attorney General State of Texas

DAN MORALES

ATTORNEY GENERAL

October 23, 1992

Mr. Kenneth H. Ashworth Texas Higher Education Coordinating Board P. O. Box 12788 Austin, Texas 78711

OR92-616

Dear Mr. Ashworth:

The Texas Higher Education Coordinating Board has received a request for the names of payees on a number of state warrants that it has issued. Some of the warrants are for payment of student financial aid under state- and federally-funded programs that the board administers. See Educ. Code §§ 52.01 (Texas Opportunity Plan); 56.073 (work-study program); 56.093 (educational opportunity grant program); 56.104 (tuition assistance grant program). You have withheld the names of payees who are students receiving financial aid and ask whether these names are excepted from public disclosure by section 14(e) of the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 17397.

Section 14(e) of the act provides as follows:

Nothing in this Act shall be construed to require the release of information contained in education records of any educational agency or institution except in conformity with the provisions of the Family Educational Rights and Privacy Act of 1974.

The Family Educational Rights and Privacy Act (FERPA) provides that no federal funds will be made available

to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein . . .) of students without the written consent of their parents.

20 U.S.C. § 1232g(b)(1). Once the student is 18 or is attending an institution of post-secondary education, he has the right to consent to disclosure of his educational records. *Id.* § 1232g(d). An educational institution may not disclose information that identifies one of its students as the recipient of financial aid. Open Records Decision No. 83 (1975) (information concerning a student's receipt of financial aid is within FERPA and section 3(a)(14) of the Open Records Act) (copy enclosed).

An "educational agency or institution" is "any public or private agency or institution which is the recipient of funds under any applicable program," that is, any program for which the Commissioner of Education has administrative responsibility. 20 U.S.C. §§ 1230, 1232g(a)(3). The Texas Higher Education Coordinating Board receives federal funds under federal programs administered by the Commissioner of Education. See, e.g., 20 U.S.C. §§ 1070c - 1070c-4 (state student incentive grants); 20 U.S.C. § 2301 et seq. (vocational education program); General Appropriation Act, Acts 1991, 72nd Leg., 1st C.S., ch. 19, at 804 (federal funds for scholarship programs appropriated to Coordinating Board). The board is therefore an educational agency subject to FERPA.

It remains to be determined whether the requested records are "educational records... of students." "Education records" are those records, files, documents, and other materials which

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4)(A) [emphasis added].

A "student"

includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

Id. § 1232g(a)(6) [emphasis added].

The Texas Higher Education Coordinating Board is not an educational agency or institution attended by students. It may prepare or maintain records about students who attend a college or university and those records will not necessarily be "education records" subject to the requirements of FERPA. However, if the Higher Education Coordinating Board receives education records about a student from the educational institution that the student attends, the education records and personally identifiable information derived from them are still subject to FERPA. The following regulation promulgated under FERPA addresses transfers of education records to institutions like the Coordinating Board:

An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student.

The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made.

34 C.F.R. § 99.33 (a)(1), (2). See also 34 C.F.R. §§ 99.31, 99.35 (permitting educational agency or institution to disclose information from student's educational records to state educational authorities or in connection with the student's application for or receipt of financial aid if receiving agency does not further disclose information).

Accordingly, whether the names of student payees on warrants are confidential under FERPA or open to the public depends upon the Coordinating Board's source of this information. Records that the student submits directly to the Coordinating Board are not subject to FERPA, nor is identifiable information derived from them, such as the student's name. In contrast, education records of a student maintained by a college or university and forwarded to the Coordinating Board, and identifiable information derived from them, are subject to FERPA requirements.

The officers and employees of the Coordinating Board are in a better position than this office to determine whether its records on recipients of

scholarships derive from the college and universities attended by those students. However, some of the Coordinating Board's rules and regulations on student financial aid programs indicate that the colleges and universities handle the application process and record-keeping for their financial aid recipients. 19 T.A.C. ch. 21. For example, the following rule pertains to the Hinson-Hazlewood College Student Loan Program:

Designation of institutional representative. Each eligible institution shall designate a full-time administrative official of the institution as the Hinson-Hazlewood College Student Loan Program officer who shall be the board's on-campus agent to certify all institutional transactions and activities with respect to the fund, and shall be responsible for all records and reports reflecting the transactions with respect to the fund. The Hinson-Hazlewood College Student Loan Program Officer may authorize other student financial aid officials at the institution to certify Hinson-Hazlewood College Student Loan Program applications.

19 T.A.C. § 21.55(d).

Under this regulation, university officials receive and certify applications for financial aid and maintain records of financial aid transactions on campus. Assuming that our understanding of the application procedure is correct, the applications and other records that "contain information directly related to a student," are held by the student's college or university and are therefore education records subject to FERPA. 20 U.S.C. § 1232g(a)(4)(A)(i). When the college or university sends the records or identifiable information from them to the Coordinating Board, the records and information continue to be subject to FERPA. Virtually identical rules applicable to other loan and scholarship programs provide for an on-campus financial aid officer. See, e.g., 19 T.A.C. §§ 21.176(b) (Texas public grants program); 21.194 (Teacher Education Loan Program); 21.405(b) (Work-Study Program).

¹The rules applicable to tuition equalization grants provides that the commissioner of education, who is the chief executive officer of the Coordinating Board, "shall designate a tuition equalization grants officer to serve at each approved institution as agent for the board." 19 T.A.C. § 21.124(c). We are unable to determine from the language of this rule whether the tuition equalization grants officer is also an officer or employee of the university.

If you need additional assistance in determining whether you must withhold the names of payees who are students receiving financial aid, please contact us, providing relevant details about your source of this information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-616.

Yours very truly,

Susan Garrison

Assistant Attorney General

Susan Garrism

Opinion Committee

SG/lmm

Ref.: ID# 17397

ID# 17423

Enclosure: Open Records Decision No. 83

cc: Mr. Frank R. Wilkeson

Corporate Counsel

Full Circle Services, Inc.

P. O. Box 3388

Tulsa, Oklahoma 74101-3388